

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAWRENCE CHRISTOPHER SMITH,
Plaintiff,
v.
SECRETARY, et al.,
Defendants.

No. 1:23-cv-00526-KES-SAB (PC)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF'S MOTION
FOR CHANGE OF VENUE AND MOTION
FOR SUMMARY JUDGMENT BE DENIED

(ECF No. 47)

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's motion for change of venue and motion for summary judgment, filed March 17, 2025. Plaintiff's motions should be denied.

Plaintiff states that he seeks a transfer of this action pursuant to 28 U.S.C. ¶ 1404. Under ¶ 1404(a), an action may be transferred, "for the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district ... where it might have been brought." The ultimate determination is subject to the discretion of the court and must be made on a case-by-case basis. Jones v. GNC Franchising, Inc., 211 F.3d 495, 498 (9th Cir. 2000). Here, Plaintiff states that he seeks to transfer the action to the "district court for the District of Columbia circuit where I will throw myself at the mercy upon the kitty's." (ECF No. 47 at 3.) Thus, Plaintiff has not provided an adequate basis to transfer this action and his motion

1 should be denied.

2 Plaintiff also attaches a motion for summary judgment in support of his claim that the
3 action should be transferred. Any motion for summary judgment is premature. The Court has not
4 yet found that Plaintiff has stated a cognizable claim for relief, no Defendant has been ordered
5 service, discovery as not yet commenced, and Defendants have not had an opportunity to pursue
6 discovery. See, e.g., Baker v. German, No. 1:16-cv-01873-AWI-SAB (PC), 2017 WL 531937, at
7 *1 (E.D. Cal. Feb. 9, 2017) (recommending summary judgment be denied where complaint not
8 yet screened and service of complaint not yet authorized), recommendation adopted 2017 WL
9 1427028 (E.D. Cal. Apr. 21, 2017); see also Dews v. County of Kern, No. 14-16423, 599 Fed.
10 App'x 681, 682 (9th Cir. Mar. 27, 2015) (finding district court properly denied Dews's motions
11 for summary judgment as premature because a court must first screen a prisoner's complaint);
12 Williams v. Yuan Chen, No. S-10-1292 CKD P, 2011 WL 4354533, at * 3 (E.D. Cal. Sept. 16,
13 2011) (denying plaintiff's summary judgment motion as premature where defendant had not yet
14 filed an answer and the court had not issued a discovery order); Moore v. Hubbard, No. CIV S-
15 06-2187 FCD EFB P, 2009 WL 688897, at *1 (E.D. Cal. Mar. 13, 2009) (recommending that pre-
16 discovery motion for summary judgment be denied as premature); Vining v. Runyon, 99 F.3d
17 1056, 1058 (11th Cir. 1996) ("A premature decision on summary judgment impermissibly
18 deprives the [defendants] of their right to utilize the discovery process to discover the facts
19 necessary to justify their opposition to the motion"). Consequently, Plaintiff's motion for
20 summary judgment is premature and must be denied.

21 Accordingly, it is HEREBY RECOMMENDED that:

- 22 1. Plaintiff's motion for change of venue and motion for summary judgment be
23 DENIED.

24 These Findings and Recommendations will be submitted to the United States District
25 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen**
26 **(14) days** after being served with these Findings and Recommendations, the parties may file
27 written objections with the Court, limited to 15 pages in length, including exhibits. The
28 document should be captioned "Objections to Magistrate Judge's Findings and

1 Recommendations.” The parties are advised that failure to file objections within the specified
2 time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39
3 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

4
5 IT IS SO ORDERED.

6 Dated: April 15, 2025



STANLEY A. BOONE
United States Magistrate Judge